

IN THE
Supreme Court of the United States

No. 138, Original

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

STATE OF NORTH CAROLINA,

Defendant.

CATAWBA RIVER WATER SUPPLY PROJECT;
CITY OF CHARLOTTE, N.C.; AND DUKE ENERGY CAROLINAS, LLC,

Intervenors.

**ANSWER OF CATAWBA RIVER
WATER SUPPLY PROJECT**

Catawba River Water Supply Project (CRWSP) files the following answer to the Complaint filed by the State of South Carolina.

CRWSP's Perspective

CRWSP's position in this litigation is to continue to ensure and facilitate an adequate water supply at the lowest possible cost to its customers in North and South Carolina, while accommodating environmental, recreational and other legitimate interests in the Catawba River within the region. CRWSP believes that an equitable apportionment by this Court is not necessary at this point. CRWSP encourages and expects the States, through their respective utilities and other

significant stakeholders with extensive knowledge of the River, to achieve resolution of their differences over the River through the implementation of the Comprehensive Relicensing Agreement (CRA), or by state and/or federal legislation, including a possible interstate compact, at substantial cost savings to the taxpayers and ratepayers in both States. If this Court believes that equitable apportionment is necessary, CRWSP believes that any apportionment must take into account CRWSP's existing and future interests in the Catawba River, including its interest in inter-basin transfers.

First Affirmative Defense

The CRA and Duke's application for renewal of its hydro project license are currently on file with FERC. Both the application and the CRA contain certain minimum flow requirements, which are adjusted in times of drought, for the Catawba River stretching from Lake James in North Carolina to Lake Wateree in South Carolina. FERC's review of Duke's application, including both the CRA and the proposed license articles, may result in the implementation of appropriate minimum flow requirements, which could satisfy South Carolina's concern over allocation of the River. Until these flow requirements are in place under the new license, it would be premature for this Court to rule on South Carolina's allegations of inequitable withdrawals from the River for inter-basin consumption by certain political subdivisions in North Carolina, including Union County, an owner in and purchaser from CRWSP.

Second Affirmative Defense

State legislatures in both North Carolina and South Carolina are each in the process of repealing and enacting inter-basin transfer and water withdrawal statutes applicable within each State. The legislatures are receiving considerable input from State agencies, commissions, water users and other groups studying the Catawba River. Certain of the proposed new laws will necessarily affect any alleged disparate impact on the citizenry of South Carolina allegedly caused by the inter-basin transfer permitting process in place in North Carolina. Equitable apportionment of the Catawba River is an extreme remedy when the legislatures of the two States are currently altering each of their respective water withdrawal approval processes.

Third Affirmative Defense

Other states have resolved water supply disputes through a process of negotiation and legislation culminating in formation of a binding interstate compact or agreement. Interstate commissions have also been created by federal legislation to manage federally-navigable waterways. There are available federal non-judicial

remedies that both States may be pursuing which could achieve an acceptable solution to this controversy.

Fourth Affirmative Defense

Union County, North Carolina, and Lancaster County Water and Sewer District (LCWSD), South Carolina, the owners of CRWSP, are dependent upon inter-basin transfers of water to serve their customers outside the Catawba River Basin. The elimination or reduction of these inter-basin transfers would be devastating to those communities in both States now served by CRWSP through these transfers. The benefits to these communities greatly outweigh the alleged harm to South Carolina attributable to inter-basin transfers by CRWSP.

Fifth Affirmative Defense

The Catawba River and its many users cannot be viewed in isolation. Preservation of the River as a water supply source which also accommodates environmental, recreational and other legitimate interests, may require the inter-basin transfer of water from other basins for consumption and other use within the region. Thus, this Court should give consideration to the entire context of water supply both within the Catawba River Basin and outside the basin and not focus exclusively on the parochial bright line at the State-line suggested by South Carolina.

Sixth Affirmative Defense

South Carolina has authorized hundreds of millions of gallons of inter-basin transfer from various rivers in South Carolina, including the Catawba River and certain rivers that join with the Catawba River. South Carolina's own actions are inconsistent with its position in this case and may be contributing to any alleged harm to downstream users of the Catawba River by reducing the flows available to South Carolina citizens within the Basin. Any equitable apportionment of the River should entail a comprehensive consideration of all relevant factors, including all water consumption and other uses of the River in South Carolina.

Seventh Affirmative Defense

The Complaint fails to state a claim upon which relief can be granted.

Eighth Affirmative Defense

CRWSP has expended considerable sums and entered into binding, long-term obligations in reliance on its rights to inter-basin transfer of water, many of which

were granted by governmental units of South Carolina. South Carolina's claims are barred by the doctrines of waiver and estoppel.

Ninth Affirmative Defense

South Carolina suffers no cognizable injury due to CRWSP's inter-basin transfers because the transferred water is returned to other water systems that flow into and through South Carolina from which South Carolina benefits.

Tenth Affirmative Defense

South Carolina cannot prove any real or substantial injury or damage to it as a result of any inter-basin transfer by CRWSP, Union County and/or LCWSD, from the Catawba River.

Eleventh Affirmative Defense

CRWSP reserves the right to assert such other defenses as may be developed during the course of this litigation.

Qualified Denial

CRWSP hereby responds to the numbered averments in the Complaint using the same numeric sequence as in the Complaint. Each and every allegation of the Complaint not specifically admitted herein is denied. Each and every statement of fact set forth in the Appendix to the Complaint not specifically admitted herein is also denied.

1. Admitted.

2. CRWSP admits the implication in the allegation that the Catawba River is essential to the continued operation of CRWSP's water plant, located south of Lake Wylie in a free-flowing stretch of the River. CRWSP also admits that the Catawba River has experienced periods of drought. CRWSP also admits that its wholesale customers, Union County and LCWSD, have placed their retail customers under mandatory water restrictions because of drought conditions. CRWSP lacks knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 2 of the Complaint.

3. CRWSP admits that North Carolina, like South Carolina, has enacted legislation authorizing inter-basin transfers of water. CRWSP lacks sufficient knowledge or information to form a belief as to the remaining allegations contained in paragraph 3 of the Complaint.

4. Denied. Further answering, the Catawba/ Wateree River Basin Bi-State Advisory Commission and legislators in both States (some of whom are affiants or mentioned in the Appendix to the Complaint) are continuing their efforts to mediate and negotiate this dispute.

5. Paragraph 5 of the Complaint contains a legal conclusion to which a response is not required. If a response is required, CRWSP denies that either South or North Carolina completely represents CRWSP's interests in this case.

6. Admitted, except for the legal conclusion that the EMC is equivalent to North Carolina, which requires no response from CRWSP.

7. CRWSP admits this Court has jurisdiction. CRWSP is without knowledge or information sufficient to form a belief as to whether there is an actual existing controversy over allocation of flow in the River among those who have a stake in such flow.

8. CRWSP admits only that the Catawba River originates in the North Carolina mountains. CRWSP is without knowledge or information sufficient to form a belief as to the remainder of paragraph 8 of the Complaint.

9. CRWSP is without specific knowledge or information sufficient to form a belief as to the geographical allegations contained in paragraph 9 of the Complaint.

10. CRWSP admits that the Catawba River Basin includes the cities of Charlotte, Gastonia and Rock Hill, the South Carolina counties of York, Lancaster, Kershaw and Chester, as well as portions of Fairfield, Sumter, Lee and Richland Counties. CRWSP also admits the area is experiencing and is expected to continue to have significant growth for many years to come. CRWSP is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 10 of the Complaint.

11. Admitted. Further answering, flow in the Catawba River is significantly enhanced by treated wastewater discharges in North and South Carolina, and by inter-basin transfer consumption in the Catawba River Basin of water from sources outside the Basin.

12. CRWSP is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 12 of the Complaint. Further answering, there are many other prior and subsequent water quality studies of the Catawba River.

13. CRWSP is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 13 of the Complaint. Further answering, CRWSP agrees wholeheartedly that cooperative efforts among stakeholders in the Catawba River Basin have been and will continue to be necessary to protect the Basin.

14. Admitted, except as follows. CRWSP is without knowledge or information sufficient to form a belief as to whether South Carolina must have more water to sustain its needs. CRWSP does not oppose South Carolina's receipt of more water, provided, however, CRWSP's intake and water transfers are unaffected or unimpaired thereby.

15. CRWSP admits there are times when mandatory water restrictions within the Catawba River Basin are appropriate. CRWSP is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 15 of the Complaint.

16. CRWSP admits that Duke Energy developed a model of the Catawba River. CRWSP is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 16 of the Complaint.

17. CRWSP admits there are times when mandatory water restrictions within the Catawba River Basin are appropriate. CRWSP is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 17 of the Complaint.

18. In response to the factual allegations (as opposed to the legal conclusions), CRWSP admits that North Carolina has enacted, revised and may be further revising its inter-basin transfer statutes. CRWSP is without knowledge or information sufficient to form a belief as to the remaining factual allegations contained in paragraph 18 of the Complaint.

19. This Paragraph contains only legal conclusions to which no response is required.

20. CRWSP admits that the cities of Concord, Kannapolis and Charlotte hold or have inter-basin transfer permits. CRWSP is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 20 of the Complaint.

21. Admitted that Union County, North Carolina, has the right to inter-basin transfers of up to 5 MGD from the Catawba River. The remaining allegations contained in paragraph 21 of the Complaint are denied.

22. CRWSP is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 22 of the Complaint.

23. CRWSP is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 23 of the Complaint.

24. Denied.

25. Paragraph 25 of the Complaint contains legal conclusions that do not require a response from CRWSP.

26. CRWSP is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 26 of the Complaint. The document referenced therein speaks for itself.

27. CRWSP is without knowledge and information sufficient to form a belief as to the allegations contained in paragraph 27 of the Complaint. The document referenced therein speaks for itself. Further answering, CRWSP agrees there are less costly alternatives than this case for resolving disputes over allocation of water in the Catawba River.

28. CRWSP admits that an inter-basin transfer permit was granted to the cities of Concord and Kannapolis by the EMC. CRWSP is without knowledge and information sufficient to form a belief as to the remaining allegations contained in paragraph 28 of the Complaint. The document referenced therein speaks for itself.

29. CRWSP is without knowledge and information sufficient to form a belief as to the allegations contained in paragraph 29 of the Complaint. The document referenced therein speaks for itself.

The remainder of the Complaint constitutes South Carolina's prayer for relief, to which no response is required of CRWSP. In the event a response is required, CRWSP denies that South Carolina is entitled to any relief in this litigation.

WHEREFORE, CRWSP prays:

- A. That this Court encourage the States, through their respective utilities and other significant stakeholders with extensive knowledge of the River, to achieve resolution of their differences by means alternative to this litigation, at substantial cost savings to the taxpayers and ratepayers in both States;
- B. That this Court conclude there is no basis or reason for equitable apportionment of the Catawba River;

- C. That if equitable apportionment of the Catawba River is necessary, such apportionment fully protect the rights and obligations of CRWSP to withdraw and transfer water from the River to its wholesale customers for consumption and for other use by their retail customers located in Union and Mecklenburg Counties, North Carolina, and Chester, Chesterfield, Kershaw and Lancaster Counties, South Carolina;
- D. That any decree issued by the Court protect the South Carolina withdrawal permit, including those portions of the permit addressing inter-basin transfer, issued jointly to Union County and LCWSD;
- E. That any decree issued by the Court protect the existing 5 MGD of inter-basin transfer grandfathered to Union County under North Carolina law;
- F. That any decree issued by the Court protect the rights of CRWSP, Union County and LCWSD to obtain withdrawal permits, inter-basin transfer permits and other authorizations in the future to respond to its evolving interests in the Catawba River; and
- G. For such other and further relief as the Court deems proper.

Respectfully Submitted,

By: 

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